

SERVED: July 26, 1994

NTSB Order No. EA-4224

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 22nd day of July, 1994

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12841
v.)	
)	
HERMAN A. REINHOLD,)	
)	
Respondent.)	
)	
DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-13003
v.)	
)	
HERMAN A. REINHOLD,)	
)	
Respondent.)	
)	

ORDER DENYING STAY

Respondent has requested a stay of NTSB Order No. EA-4185 (served June 13, 1994), pending disposition of a petition for review of that order which has been filed in the U.S. Court of Appeals for the Eleventh Circuit. The Administrator opposes the request.

In Order No. EA-4185, we affirmed initial decisions in two

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separate enforcement actions. In the first action (SE-12841) we affirmed a 90-day suspension of respondent's pilot certificate based on respondent's violation of 14 C.F.R. § 91.111(a), § 91.113(d) and (f), and § 91.13(a) in connection with a near mid-air collision due in part to respondent's failure to follow right-of-way rules. In the second action (SE-13003), we affirmed a 270-day suspension based on respondent's violation of 14 C.F.R. § 91.111(a), § 91.113(b), (e) and (g), and § 91.13(a), in connection with three incidents where respondent again created a collision hazard and violated right-of-way rules.

We generally grant stays of our orders pending judicial review when the suspension affirmed is for less than six months.

However, we have consistently denied stays in cases involving certificate revocation, because revocation is based upon a conclusion that the airman lacks the qualifications required of a certificate holder. Decisions in cases in between -- i.e., those involving suspensions of six months or more -- are made on a case-by-case basis, and are based on an evaluation of the seriousness of the violations affirmed. See Administrator v. Potanko NTSB Order No. EA-3990 n. 2 (1993); Administrator v. Green NTSB Order No. EA-3375 (1991).

Our order in this case affirmed two separate suspensions (one for 90 days and another 270 days) arising from incidents which were prosecuted in two separate enforcement actions. The 270-day suspension clearly falls into the category of cases in which a stay request is evaluated in light of the seriousness of the violations. In our judgment, respondent's conduct in that case (specifically, his disregard of right-of-way rules and creation of a collision hazard on three occasions) was sufficiently egregious that a stay of the suspension would be contrary to the interests of aviation safety. As for the 90-day suspension, while that case would appear to fall into the category of cases where stays are routinely granted, we think that in view of the similarity of respondent's violations in that case to those affirmed in the other case, a stay of the 90-day suspension would be inappropriate. We agree with the Administrator that "the conduct on which the two legal actions were based together demonstrate a pattern of behavior through which the [r]espondent seeks advantage over the pilots of competing aircraft through intimidating and threatening conduct."

(Administrator's opposition to motion for stay, at 6.) Accordingly, we think that a stay of either suspension affirmed in EA-4185 would be inconsistent with the public interest and aviation safety.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's motion for stay is denied.
HALL, Acting Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above order.